

The Implications of Gifting on Medicaid Eligibility

By: Casey W. Pope, Esq.

December is the month for giving. Whether it's giving to family and friends because of the holidays, or giving to your favorite charity as part of your annual tax planning, I see folks being most the generous with their time and resources this time of year than any other.

One thing that many people do not consider when gifting, however, is the potential impact that it may have if they currently receive Medicaid or anticipate having to apply for Medicaid in the future. Under North Carolina law, Medicaid applicants are penalized for making gifts. The penalty is a period of ineligibility for Medicaid assistance which varies in length depending on the size of the gift.

For Medicaid purposes, a gift is defined as an uncompensated transfer. In other words, if you give away any of your property or money without receiving equivalent payment in return, then you've made a gift. You can also make a partial gift if you sell property for less than its fair market value. In that case, the value of the gift is the difference between the fair market value of the property and the consideration that you received from the buyer.

Not all gifts are penalized. Medicaid only considers gifts made in the five years prior to your application for Medicaid. So, even if you gave away a million dollars in the year 2000, you could still qualify for Medicaid without penalty if you applied today. Medicaid also does not penalize gifts made to certain recipients, regardless of when they're made. These recipients include your spouse, a blind or disabled child (regardless of age), and trusts for the benefit of a disabled person under age 65. If you're giving away your house, then permissible recipients also include your children under age 21, a caretaker child of any age who has lived in the home for more than two years, or a sibling with an equity interest in the home who has lived there for more than one year.

As I mentioned earlier, the penalty for gifting depends on the value of the gift. Under the current Medicaid laws, the length of the penalty period is determined by dividing the total value of the gifts made over the last five years by \$5,500. The resulting number is the number of months that the Medicaid applicant is ineligible to receive Medicaid assistance. For example, if the applicant gave his nephew \$55,000 last year, the penalty period is 10 months. The penalty period does not begin until the Medicaid applicant is in a nursing home and has spent down his assets to a level where he is qualified to receive Medicaid. In other words, the applicant must be in a situation where, had he not made the gifts, he would be eligible to receive Medicaid, before the penalty clock starts running.

Current Medicaid laws allow the penalty period to be forgiven if the gifted property is returned to the applicant. However, once the gifted property is returned, it is considered a resource to the applicant and often must be spent down in order for the applicant to qualify for Medicaid. So, whether it's the holiday season or any other time of year, you should always consider the implications of gifting if you anticipate needing nursing home care in the next five years.

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